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Kaupp v. Texas: Breathing Life into the Fourth Amendment

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KAUPP v. TEXAS: BREATHING LIFE INTO THE FOURTH AMENDMENT

Kaupp v. Texas, 123 S. Ct. 1843 (2003)

I. INTRODUCTION

In *Kaupp v. Texas*, the United States Supreme Court held that the Fourth Amendment was violated when police officers, without probable cause, went to Robert Kaupp's house in the middle of the night, awakened him, handcuffed him, and brought him to the police station for questioning.[1] The Court found that a reasonable person in Kaupp's position would not have believed he was free to leave, or otherwise terminate the police encounter.[2] Thus, based on the record before the Court, the Court would have suppressed a confession made as a result of this illegal seizure, thereby reaffirming Fourth Amendment jurisprudence protecting citizens from unreasonable search or seizure.[3]

This Note argues that the Supreme Court correctly decided *Kaupp v. Texas*. The circumstances surrounding Kaupp's seizure and subsequent confession exceed the boundaries set by the Supreme Court of a reasonable seizure. While the Fourth Amendment applies to both searches and seizures, this Note will focus on seizures only. This Note first examines the history of Fourth Amendment jurisprudence and some recent developments in the Supreme Court's interpretation of seizures. Using these standards, this Note will argue that the Court's finding that a seizure occurred was correct, and the Court properly concluded that Kaupp's confession should have been suppressed because a blatant Fourth Amendment violation had occurred. Finally, this Note will discuss how the *Kaupp* decision has affected lower courts' Fourth Amendment jurisprudence.

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[1] 123 S. Ct. 1843, 1845 (2003) (per curiam).

[2] *Id.* at 1847.

[3] *Id.* at 1848. The Court required the state to "point to testimony undisclosed on the record before us, and weighty enough to carry the state's burden despite the clear force of the evidence shown here" in order to avoid suppression of Kaupp's confession. *Id.*

II. BACKGROUND

A. THE MAKING OF THE FOURTH AMENDMENT

The Fourth Amendment was the colonists' response to the unlimited intrusions by the British government into their privacy in the 1700s.[4] Using a Writ of Assistance, British customs officials were able to enter any home and search the premises for evidence of customs violations.[5] These officials did not need "to have particularized suspicions about any person or place before searching, nor were they required to justify their actions to any authority after the search."[6] The Framers found these unchecked governmental actions by the British unacceptable.[7] To ensure that their new government would not have this type of arbitrary power, and to protect against the recurrence of these unchecked governmental actions, the Framers included the Fourth Amendment in the Bill of Rights, granting the right to be free from unreasonable searches and seizures.[8] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[9]

B. REMEDIES UNDER THE FOURTH AMENDMENT: THE EXCLUSIONARY RULE

The Supreme Court has interpreted the purpose of the Fourth Amendment in preventing unreasonable seizures not as doing away with all police contact with the citizenry, but as prohibiting arbitrary police interference into a citizen's privacy and personal security.[10] If a Fourth Amendment violation occurs, the person subjected to the unreasonable search or seizure is entitled to a remedy. Historically, the remedy existed in the world of tort, and any evidence obtained as a result of an illegal search

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[4] Alan C. Yarcusko, Brown *to* Payton *to* Harris*: A Fourth Amendment Double Play by the Supreme Court*, 43 CASE W. RES. L. REV. 253, 257-58 (1992).

[5] *Id.* at 257.

[6] *Id.*

[7] *Id.* at 257-58.

[8] *Id.*

[9] U.S. CONST. amend. IV. The Fourth Amendment applies to the states through the Fourteenth Amendment. *See* Mapp v. Ohio, 367 U.S. 643 (1961).

[10] United States v. Martinez-Fuerte, 428 U.S. 543, 554-55 (1976).

or seizure was still admissible.[11] Other remedies were also available, including bringing an action for civil trespass.[12]

The exclusionary rule, which suppresses evidence unlawfully obtained, began with *Boyd v. United States*[13] and was the result of the Court's rule-blending—the Fourth Amendment's prohibition of illegal seizures and the Fifth Amendment's prohibition of compelled self-incrimination.[14] In *Boyd*, the Court held that illegally seized evidence could not be used in a criminal trial.[15] While later Courts did not accept this fusion of the Fourth and Fifth Amendments, the exclusionary rule remained as a remedy to a Fourth Amendment violation.[16] Courts, however, are sometimes hesitant to use this rule in cases where the evidence illegally obtained is "inherently trustworthy."[17]

C. THE FOURTH AMENDMENT TODAY

The Fourth Amendment and the exclusionary rule continue to serve legitimate purposes today. To allow police officers or other government officials to conduct searches and seizures at their own discretion would result in the arbitrary and unjustified intrusions that the Framers feared.[18] The exclusionary rule also serves to preserve judicial integrity and to deter illegal police activity.[19] By keeping evidence obtained as a result of a constitutional violation out of the courtroom, the integrity of the courts will not be harmed.[20] Further, assuming police officers desire criminal convictions, if they know that any unconstitutional activity that occurs while acquiring evidence prevents that evidence from reaching the courtroom, then they will be less likely to commit these constitutional

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[11] *See* AKHIL REED AMAR, THE CONSTITUTION AND CRIMINAL PROCEDURE: FIRST PRINCIPLES 20-22 (1997). Amar feels the modern Supreme Court has made the exclusionary rule an "awkward and embarrassing remedy" that has distorted the remedies available for Fourth Amendment violations. *Id.* at 20.

[12] *Id.* at 20-21.

[13] 116 U.S. 616 (1886).

[14] AMAR, *supra* note 11, at 22.

[15] *See* William D. Levinson, *Supreme Court Review: Fourth Amendment—A Renewed Plea for Relevant Criteria for the Admissibility of Tainted Confessions:* Taylor v. Alabama, 73 J. CRIM. L. & CRIMINOLOGY 1408, 1411 (1982).

[16] AMAR, *supra* note 11, at 24-25.

[17] *See* Yarcusko, *supra* note 4, at 267 (citing United States v. Leon, 468 U.S. 897, 907 (1984)). Where the court feels that the exclusionary rule will have no deterrent effect, such as instances where the police act in good faith in carrying out a warrant later found invalid, the court may choose not to exclude illegally obtained evidence. *Id.* at 266-67.

[18] Payton v. New York, 445 U.S. 573, 583-86 (1980).

[19] Yarcusko, *supra* note 4, at 266.

[20] *Id.*

violations.[21] The following cases serve to illustrate the evolution of Fourth Amendment law and the suppression of resulting confessions as related to unreasonable seizures.

1. Determining Whether a Seizure of a Person is Unlawful

The Supreme Court has looked to various factors to determine whether an illegal, or unreasonable, seizure has occurred. The Court has balanced several considerations, such as probable cause, the location of the arrest, and whether one would feel free to leave the police encounter, in order to determine whether a seizure was reasonable. Further, the Court has considered whether the situation also requires the balancing of exigent circumstances such that an otherwise unreasonable seizure should be deemed reasonable. Examples of circumstances the Court has recognized as exigent include being under life-threatening circumstances, being in hot pursuit of a suspect by the police, and having the need to preserve evidence.[22]

a. Requirement of Probable Cause

In order for a police officer to seize a person without violating the Fourth Amendment, the officer must have probable cause. "For there to be probable cause, the facts must be such as would warrant a belief by a reasonable man."[23] To make such a determination, courts should consider the detaining officer's expertise and experience.[24] Detaining a person without probable cause for a custodial interrogation "intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest."[25]

The analysis of probable cause involves considering the totality of the circumstances.[26] In *Illinois v. Gates*, the Supreme Court recognized that in the past it had allowed a warrantless arrest where police relied on an informant's tip that was reasonably corroborated through the police's own work.[27] The Court looked to the veracity, reliability of the informant as well as the informant's basis of knowledge to determine whether or not

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[21] *Id.*

[22] Carmine V. Capasso, *Supreme Court Reduces Constitutional Guarantees Found in Fourth Amendment*—Illinois v. McArthur, 36 SUFFOLK U. L. REV. 615, 618 n.27 (2003).

[23] WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE 149 (3d ed. 2000).

[24] *Id.*

[25] Dunaway v. New York, 442 U.S. 200, 216 (1979).

[26] Illinois v. Gates, 462 U.S. 213, 230 (1983).

[27] *Id.* at 241-42 (citing Jones v. United States, 362 U.S. 257, 269 (1960)).

probable cause was present.[28] The presence of probable cause would indicate that a search or seizure was reasonable.[29] The Court favored the totality of the circumstances test because it was consistent with the process of obtaining a warrant.[30]

In *Dunaway v. New York*, the Supreme Court found a Fourth Amendment violation where probable cause did not support the defendant's detention.[31] In *Dunaway*, police officers could not get a warrant to arrest the defendant.[32] Nevertheless, the officers located him, took him into custody, and brought him to the police station for questioning about a recent murder.[33] The officers did not tell Dunaway that he was under arrest, but would have physically restrained him if he had tried to leave.[34] He was given his *Miranda* warnings after being put in an interrogation room.[35] After questioning, he made some incriminating statements and sketches.[36]

The Supreme Court, in deciding *Dunaway*, made an effort to point out the special circumstances that led to the departure from traditional Fourth Amendment analysis articulated in *Terry v. Ohio* as the stop-and-frisk exception.[37] In *Terry*, the Court allowed a police officer to stop a suspect and frisk him for weapons with only reasonable suspicion and no probable cause.[38] In a stop-and-frisk situation like the one in *Terry*, the Court felt that the degree of police intrusion was a great deal less severe than the degree of police intrusion associated with a traditional arrest.[39] Thus, the

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[28] *Id.* at 230.

[29] *Id.* at 236-37. The Court reaffirmed the "traditional standard for review of an issuing magistrate's probable-cause determination" which required the magistrate to have a "'substantial basis for . . . conclud[ing]' that a search would uncover evidence of wrongdoing" in order to avoid a Fourth Amendment violation. *Id.* (quoting Jones v. United States, 362 U.S. 257, 271 (1960)).

[30] *Id.* at 235-36. "[M]any warrants are . . . issued on the basis of nontechnical, common-sense judgments of laymen applying a standard less demanding than those used in more formal legal proceedings." *Id.*

[31] 442 U.S. 200, 216 (1979).

[32] *Id.* at 203.

[33] *Id.* at 202-03.

[34] *Id.* at 203 (citing Appendix to the Petition for Writ of Certiorari at 116-17, People v. Dunaway, No. 78-5066 (Monroe County Ct., Mar. 11, 1997)).

[35] *Id.*

[36] *Id.*

[37] *Id.* at 207-11; Terry v. Ohio, 392 U.S. 1 (1968). The Court in *Terry* found that a stop-and-frisk scheme "amount[ed] to a mere 'minor inconvenience and petty indignity,' which can properly be imposed upon the citizen in the interest of effective law enforcement on the basis of a police officer's suspicion." 392 U.S. at 10-11 (quoting People v. Rivera, 201 N.E.2d 32, 36 (N.Y. 1964)).

[38] 392 U.S. at 10-11.

[39] *Dunaway*, 442 U.S. at 209.

Court did not deem the stop-and-frisk an arrest and did not require a showing of probable cause for such an encounter.[40] The Court recognized that a seizure occurs "whenever a police officer accosts an individual and restrains his freedom to walk away" and that such a seizure "may inflict great indignity and arouse strong resentment" on the person being seized.[41] However, in determining the reasonableness of a seizure, the Court balanced the need for the governmental intrusion against the suspect's privacy rights.[42] In the case of a stop-and-frisk, the governmental interests of preventing and detecting crime outweighed the limited privacy invasion of the suspect.[43] Therefore, in *Terry*, the officer's seizure of the suspect was reasonable as long as he had reasonable suspicion that the suspect was armed.[44] The Court in *Dunaway* held that, unlike the stop-and-frisk situation of *Terry*, Dunaway's detention was a traditional arrest.[45] Thus, probable cause was required and its absence indicated that the Fourth Amendment had been violated.[46]

In some cases, a warrant is not necessary if both probable cause and exigent circumstances are present at the time of the seizure.[47] Courts have found such a seizure reasonable even though the police did not have a warrant.[48] In *Illinois v. McArthur*, the Supreme Court held that where probable cause existed, the police did not violate the Fourth Amendment when prohibiting a man from going into his home while a search warrant was obtained.[49] The Court recognized that a warrant was not necessary in certain cases, such as "[w]hen faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like . . . ."[50] In *McArthur*, the measures that the police took were reasonable in light of the special law enforcement need of preserving evidence.[51] McArthur's temporary detainment outside his home was reasonable because: (1) probable cause existed; (2) the evidence would likely be destroyed if the officers had to wait to obtain a warrant; (3) the officers reasonably accommodated McArthur's privacy interests; and (4) the detainment was

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[40] *Id.*
[41] *Terry*, 392 U.S. at 16-17.
[42] *Id.* at 20-21.
[43] *Id.* at 22-24.
[44] *Id.* at 27, 30.
[45] *Dunaway*, 442 U.S. at 212.
[46] *Id.* at 216.
[47] Capasso, *supra* note 22, at 615.
[48] *Id.*
[49] 531 U.S. 326, 328 (2001).
[50] *Id.* at 330.
[51] *Id.* at 334.

for a limited time (two hours).[52] This warrantless seizure was less intrusive than a warrantless arrest and thus not a Fourth Amendment violation.[53]

b. Location of the Warrantless Arrest: Privacy of the Home

Another factor the Supreme Court has considered in determining the legality of a warrantless arrest is the location of the arrest. The Court has traditionally been very protective of intrusions into the private home and has subjected to a greater scrutiny those cases involving an intrusion into the privacy of the home.[54] In *Payton v. New York*, the Court stated that reasonable warrantless arrests occurring in a public place would not necessarily be reasonable if the same arrest occurred in a private home.[55] The Court made this distinction because the Fourth Amendment specifically provides for protection of persons in their houses: "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."[56] The sanctity of the home was an important concern of the Framers; therefore, any seizure inside a home carried a presumption of unreasonableness.[57]

About four years later, in *Welsh v. Wisconsin*, the Supreme Court expanded the *Payton* holding.[58] The Court reaffirmed the rule that warrantless home arrests were allowed only if the crime was a felony, and probable cause and exigent circumstances existed.[59] This rule made the presumption of unreasonableness harder to rebut when the warrantless home arrest was for a minor offense.[60] Such a minor offense existed in *Welsh*, where the defendant was arrested for a civil traffic offense.[61] The

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[52] *Id.* at 331-33.

[53] *Id.* at 332, 336.

[54] *See, e.g.*, Wilson v. Layne, 526 U.S. 603, 609-11 (1999) (recognizing the importance of the "centuries-old principle of respect for the privacy of the home" and applying the "basic principles of the Fourth Amendment" to the defendant's situation); Welsh v. Wisconsin, 466 U.S. 740, 748-49 (1984); Payton v. New York, 445 U.S. 573, 585-87 (1980); Johnson v. United States, 333 U.S. 10, 14 (1948) (noting that "[t]he right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance"). *Cf.* Illinois v. McArthur, 531 U.S. 326, 337 (2001).

[55] 445 U.S. at 576.

[56] *Id.* at 585 (quoting United States v. United States District Court, 407 U.S. 297, 313 (1972)).

[57] *Id.* at 583-86.

[58] 466 U.S. 740 (1983).

[59] *Welsh*, 466 U.S. at 741-42, 749 n.11.

[60] *Id.* at 750.

[61] *Id.* at 754.

Court held that this arrest was unreasonable because of the special Fourth Amendment protections of an individual in the home.[62]

However, when the Court finds the presence of exigent circumstances, a warrantless seizure affecting the privacy of the home is not per se unreasonable.[63] In *United States v. Santana*, the police were in hot pursuit of the defendant when the defendant fled to her house.[64] The police followed her into her house where they arrested her and discovered heroin on her.[65] The Court found the warrantless home arrest to be reasonable since the chase had begun in a public place, the officers were in hot pursuit, and a realistic concern about the destruction of evidence existed.[66]

Further, the Supreme Court has found that a police officer's visit to an individual's home, which results in the transportation of the individual to the police station without his consent, without probable cause, and without prior judicial authorization, constitutes a Fourth Amendment violation.[67] In *Hayes v. Florida*, the police wanted to question Hayes about a series of burglary-rapes occurring in the area.[68] The police officers did not have probable cause, nor did they seek or obtain a warrant approving of this encounter.[69] The officers wanted to take Hayes to the station for fingerprinting, but Hayes was reluctant to go.[70] Hayes did not agree to go until after the officers told him that they would arrest him if he did not comply with their request.[71] The Court found that the encounter exceeded the limits authorized by *Terry v. Ohio*.[72] Thus, a violation of the Fourth Amendment had occurred since the defendant did not consent to being transported to the police station, and the officers did not have probable cause or a warrant to justify their conduct.[73]

c. Restraint of Movement: Free to Leave Test

In determining whether or not the Fourth Amendment was violated, the Supreme Court has also looked to the degree of restraint on an

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[62] *Id.*

[63] *See* Illinois v. McArthur, 531 U.S. 326, 337 (2001).

[64] 427 U.S. 38, 40-42 (1976).

[65] *Id.* at 40-41.

[66] *Id.* at 42-43.

[67] Hayes v. Florida, 470 U.S. 811, 814-15 (1985).

[68] *Id.* at 812.

[69] *Id.* at 812-13.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 814.

[73] *Id.*

individual's freedom of movement. The greater the restraint on an individual's freedom of movement, the more a police encounter will seem like an illegal seizure. The Court has set forth a totality of the circumstances test to determine whether an individual will feel free to leave during a police encounter.[74]

In *United States v. Mendenhall*, the Court "adhere[d] to the view that a person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained."[75] The Court concluded that an unreasonable seizure occurs

> if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.[76]

The Court did not find an unreasonable seizure in *Mendenhall*.[77] Since Mendenhall's initial encounter with the federal agents occurred in a public place, no weapons were displayed, the officers were not in uniform, and the officers only asked to see Mendenhall's identification and ticket, the Court found that this did not constitute a Fourth Amendment violation.[78] In addition, Mendenhall's subsequent visit to the airport DEA office where she was further questioned and searched also did not constitute a Fourth Amendment violation because there were no threats and she was not told that she was required to go to the DEA office.[79] The Court found that the totality of the circumstances test did not warrant a finding of a Fourth Amendment violation.[80]

The Court again considered what constituted an arrest in *Florida v. Bostick*.[81] In *Bostick*, the Supreme Court emphasized the applicability of the totality of circumstances test to all police encounters, regardless of whether the encounter "take[s] place on a city street or in an airport lobby . . . [or] on a bus."[82] The police encounter in *Bostick* consisted of two

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[74] *See* United States v. Mendenhall, 446 U.S. 544 (1980); Schneckloth v. Bustamonte, 412 U.S. 218, 227-35 (1973) (discussing voluntariness in the context of consent to police searches).

[75] *Mendenhall*, 446 U.S. at 553.

[76] *Id.* at 554.

[77] *Id.* at 555.

[78] *Id.*

[79] *Id.* at 548-49, 557-58.

[80] *Id.* at 557-58.

[81] 501 U.S. 429 (1991).

[82] *Id.* at 439-40.

police officers boarding a bus to look for drugs and asking the defendant if they could search his bag.[83] While the Court did not decide whether this encounter constituted a seizure,[84] it

> adhere[d] to the rule that, in order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.[85]

The Court held that being approached by a police officer and asked a few questions did not constitute a seizure as long as a reasonable person would have believed he was "free to leave" or had the ability not to answer the officer's questions.[86] The point of view of a reasonable person was that of an innocent person.[87] Here, the Court found that the defendant's freedom of movement was not restricted by police conduct, but by his independent decision to ride a bus.[88] Since being on the bus restricted Bostick's movement such that he would likely not feel free to leave the police encounter, the proper analysis was to determine "whether a reasonable person [in Bostick's position] would feel free to decline the officers' requests or otherwise terminate the encounter."[89]

More recently, in *California v. Hodari D.*, the Court reemphasized that an arrest occurs when any physical force—in the form of "laying on of hands" or restraint of movement—is applied or when the defendant submits to an assertion of authority.[90] Therefore, in the absence of physical force, when there has been no submission to authority, an arrest has not occurred.[91] The Court noted that the *Mendenhall* test was an objective one since a show of authority is established only when the officer's conduct conveys to a reasonable person that his movement is restricted, and not when the suspect believes that his movement has been restricted.[92]

In *Hodari D.*, the defendant was chased by two police officers who were suspicious after he began running upon seeing the officers' car approaching.[93] Before one of the officers apprehended Hodari D., he threw

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[83] *Id.* at 431.

[84] *Id.* at 437.

[85] *Id.* at 439.

[86] *Id.* at 434 (citing California v. Hodari D., 499 U.S. 621, 628 (1991)).

[87] *Id.* at 438.

[88] *Id.* at 436.

[89] *Id.*

[90] 499 U.S. at 626. This proposition was first stated in *Terry*. *See id.* at 625.

[91] *See id.* at 626.

[92] *Id.* at 628.

[93] *Id.* at 622-23.

away a small item that turned out to be crack cocaine.[94] The Court held that at the time Hodari D. discarded the item, he was not under arrest; thus, the drugs could not be excluded as the fruit of an illegal seizure.[95] Hodari D. did not submit to the authorities until after he had discarded the drugs, since the arrest did not occur until the officer tackled him.[96] The Court was reluctant to expand the Fourth Amendment and the definition of seizure to include situations where the police officer is in hot pursuit of the suspect.[97]

2. Determining Whether Fruits of an Illegal Seizure Should be Suppressed

After deciding that an illegal seizure has occurred, courts must determine if any evidence obtained as a result of the illegal seizure should be suppressed. Despite some strong criticism,[98] courts continue to use the exclusionary rule, a remedy for Fourth Amendment violations, which requires the suppression of evidence obtained as fruit of an illegal seizure. However, the rule is not applied in every case where there is a Fourth Amendment violation, since suppression of evidence obtained as the fruit of an illegal seizure is not "a personal constitutional right of the party aggrieved."[99] Courts look to various factors to determine whether the exclusionary rule should apply.[100]

a. Birth of the Attenuation Analysis in Relation to Confessions

The Supreme Court first considered whether a confession should be excluded as the fruit of an illegal arrest in *Wong Sun v. United States*.[101] The Court recognized that "[t]he exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion."[102] Included in these "physical, tangible materials" is verbal evidence such as confessions.[103]

In *Wong Sun*, Wong Sun and James Wah Toy, were illegally arrested and had pretrial statements prepared for them in the form of confessions.[104]

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[94] *Id.* at 623.

[95] *Id.* at 629.

[96] *Id.*

[97] *Id.* at 627.

[98] *See* AMAR, *supra* note 11, at 20-31.

[99] Illinois v. Gates, 462 U.S. 213, 223 (1983) (quoting United States v. Calandra, 414 U.S. 338, 348 (1974)).

[100] *See* Brown v. Illinois, 422 U.S. 590 (1975).

[101] 371 U.S. 471 (1963); *see* LAFAVE ET AL., *supra* note 23, at 508.

[102] *Wong Sun*, 371 U.S. at 485.

[103] *Id.* at 485-86.

[104] *Id.* at 476, 484, 491.

In both cases, the Court looked at the surrounding circumstances to decide whether the statements obtained were each "sufficiently an act of free will to purge the primary taint of the unlawful invasion."[105]

In Toy's case, the oral statements he made to police officers following his unlawful arrest were held to be protected by the exclusionary rule.[106] The Court considered the surrounding circumstances of the illegal arrest, including the facts that: (1) six or seven police officers chased Toy as he ran toward his living quarters; (2) the police did not attempt to get an arrest warrant; and (3) the police never stated the purpose of their presence.[107] In light of these circumstances, the Court found that Toy's statements were not admissible because they were not an act of free will, and no intervening independent act had occurred to warrant a contrary conclusion.[108]

However, the Court found that an intervening independent act existed in Wong Sun's case.[109] Since Wong Sun was released from custody and returned on his own accord a few days later when he made the statement, the Court held "that the connection between the arrest and the statement had 'become so attenuated as to dissipate the taint.'"[110] Under the attenuation analysis and in light of the totality of the surrounding circumstances, his statement was an act of free will and therefore admissible.[111]

b. Further Development of the Attenuation Analysis

The "attenuation analysis" set forth in *Wong Sun* was muddied after *Miranda v. Arizona*, where the Supreme Court held that "[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."[112] As a result of this holding, lower courts began to consider only whether or not a defendant received his *Miranda* warnings when deciding the admissibility of confessions.[113] Even in cases where the confession was obtained through an illegal arrest, some courts did not undergo the attenuation analysis, which was required of courts after *Wong*

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[105] *Id.* at 486, 491.
[106] *Id.* at 487.
[107] *Id.* at 480-83.
[108] *Id.* at 486.
[109] *Id.* at 491.
[110] *Id.*
[111] *Id.*
[112] Miranda v. Arizona, 384 U.S. 436, 444 (1966).
[113] Yarcusko, *supra* note 4, at 270.

Sun.[114] However, the Supreme Court reemphasized and elaborated on the attenuation analysis in *Brown v. Illinois*.[115]

In *Brown*, police officers wanted to question Brown about a murder since he was an acquaintance of the victim, but did not have probable cause or a warrant when they arrested him.[116] The officers held him at gunpoint as he was about to enter his apartment, and told him he was under arrest.[117] The police brought Brown to the police station, where he was given the *Miranda* warnings.[118] After being questioned, he eventually signed a written statement admitting his participation in the murder.[119]

The Supreme Court rejected the lower court's conclusion that the reading of the *Miranda* warnings by itself was sufficient to remove the taint of the illegal arrest and make the statements a product of the defendant's free will.[120] Since "*Miranda* warnings, alone and per se, cannot always make the act [of confessing] sufficiently a product of free will . . . [and cannot break] the causal connection between the illegality and the confession," the Court turned to the specific facts of the case.[121] In its attenuation analysis, the Court considered the following factors: (1) whether the *Miranda* warnings were given; (2) "the temporal proximity of the arrest and the confession;" (3) "the presence of intervening circumstances;" and (4) "the purpose and flagrancy of the official misconduct . . . ."[122] Consideration of these factors in Brown's case supported the finding that Brown's confession was the fruit of an illegal seizure.[123] Although Brown received the *Miranda* warnings, his statement occurred no more than two hours after his illegal arrest.[124] In addition, no significant intervening event occurred during this time.[125] Further, the misconduct of the officers was purposeful and flagrant—the officers knew that they did not have probable cause or a warrant when they arrested Brown and apprehended him in a way that appeared to be "calculated to cause surprise, fright, and confusion."[126]

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[114] *Id.*
[115] 422 U.S. 590, 603 (1975).
[116] *Id.* at 591-92.
[117] *Id.* at 593.
[118] *Id.* at 594.
[119] *Id.* at 594-95.
[120] *Id.* at 603.
[121] *Id.*
[122] *Id.* at 603-04.
[123] *Id.* at 604-05.
[124] *Id.* at 604.
[125] *Id.*
[126] *Id.* at 605.

About fifteen years later, in *New York v. Harris*, the Supreme Court held that "where police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the home in violation of *Payton*."[127] The police in *Harris* had probable cause to believe that Harris was a murderer.[128] Police officers, without obtaining an arrest warrant, went to his apartment and entered after displaying their guns and badges.[129] Inside his apartment, Harris was read his *Miranda* rights and subsequently confessed to the killing.[130] He signed a written inculpatory statement at the police station after he was again given his *Miranda* rights.[131]

The admissibility of the written statement was in dispute.[132] While the Court admitted that Harris's warrantless home arrest violated the Fourth Amendment, it declined to find all evidence obtained as a result of the illegal seizure per se inadmissible.[133] The Court distinguished this case from *Brown* because the police officers had probable cause to arrest the defendant in *Harris*.[134] In order to apply the attenuation analysis set forth in *Brown*, "the challenged evidence [must be] in some sense the product of illegal governmental activity."[135] Since the police officers in this case had probable cause, there was no underlying illegality and thus no need to apply *Brown*'s attenuation analysis.[136]

III. STATEMENT OF THE FACTS

In January 1999, a fourteen year old girl, Destiny Thetford, disappeared.[137] Her half-brother, Nicholas Thetford, was a suspect because the police discovered that he and Destiny had a sexual relationship.[138] Nicholas and Robert Kaupp, the defendant, had been together on the day of Destiny's disappearance.[139] The Harris County Sheriff's Department

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[127] 495 U.S. 14, 21 (1990).

[128] *Id.* at 15.

[129] *Id.*

[130] *Id.* at 16.

[131] *Id.*

[132] *Id.*

[133] *Id.* at 17.

[134] *Id.* at 18-19.

[135] *Id.* at 19 (quoting United States v. Crews, 445 U.S. 463, 471 (1980)).

[136] *Id.*

[137] Kaupp v. Texas, No. 14-00-00128-CR, 2001 WL 619119, at *1 (Tex. Ct. App. June 7, 2001) (not designated for publication).

[138] *Id.*

[139] *Id.*

questioned both Nicholas and Kaupp.[140] After cooperating, Kaupp was allowed to leave; however, "[Nicholas] failed a polygraph examination . . . . [He] [e]ventually confessed that he had fatally stabbed his half sister and placed her body in a drainage ditch."[141] In his confession, Nicholas implicated Kaupp in her death.[142]

In response, police officers tried to obtain a pocket warrant to question Kaupp, but failed.[143] The officers admitted that they did not have probable cause for Kaupp's arrest, which is why they did not seek a conventional arrest warrant.[144] Further, the officers did not have any evidence that corroborated Nicholas Thetford's implications of Kaupp's involvement.[145] Nonetheless, they attempted to find Kaupp and question him.[146] At approximately 3:00 a.m., "[s]ix police cars along with a large number of officers arrived at the Kaupp home and stationed themselves around the house in various locations."[147] Three police officers knocked on the door of the Kaupp home.[148]

Kaupp's father answered the door, and the officers asked for his son.[149] The officers went to Kaupp's bedroom and one officer shined a flashlight on Kaupp.[150] One officer stated, "[w]e need to go and talk," whereupon Kaupp replied "okay."[151] Kaupp was then handcuffed and led out of his house "shoeless and dressed only in boxer shorts and a T-shirt."[152] Unknown to Kaupp, one officer believed that Kaupp was under arrest at the time he was handcuffed.[153]

Kaupp was put in a patrol car and taken to the police station after a brief stop at the site where the victim's body had been found.[154] The police

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[140] *Id.*

[141] *Kaupp*, 123 S. Ct. at 1844-45.

[142] *Id.* at 1845.

[143] *Id.* The police officers described a "pocket warrant" as giving them "authority to take Kaupp into custody for questioning." *Id.* at 1845 n.1.

[144] *Id.*

[145] *Id.*

[146] *Id.* at 1845.

[147] Petition for a Writ of Certiorari for Appellant at 1-2, Kaupp v. Texas, 123 S. Ct. 1843 (2003) (No. 02-5636) [hereinafter Appellant's Petition].

[148] *Id.*

[149] *Id.* at 2.

[150] *Id.*

[151] *Kaupp*, 123 S. Ct. at 1845.

[152] *Id.*

[153] Kaupp v. Texas, Cause No. 803,792 (Tex. Dist. Ct. Jan. 18, 2000) [hereinafter Cause No. 803,792] (court's findings of facts and conclusions of law regarding admissibility of statement).

[154] *Kaupp*, 123 S. Ct. at 1845.

stated that they made the stop to let Kaupp know that Nicholas had told them where Destiny's body could be found.[155] Further, they wanted to show Kaupp where the body was because they were going to confront Kaupp with Nicholas's confession once they got to the police station.[156] At the station, Kaupp was taken into an interview room, had his handcuffs removed, and was advised of his *Miranda* rights.[157] At first, Kaupp denied any involvement in the murder.[158] However, after being told of his friend's confession, he signed a confession admitting to participating in the crime.[159]

IV. PROCEDURAL HISTORY

A. THE DECISION OF THE DISTRICT COURT OF HARRIS COUNTY, TEXAS

Kaupp entered a plea of not guilty to the charge of murder.[160] The jury found him guilty and sentenced him to fifty-five years imprisonment in the Texas Department of Criminal Justice, Institutional Division.[161] During his trial, Kaupp moved to suppress his confession, but was unsuccessful.[162] In ruling on the admissibility of Kaupp's confession, the district court stated that Kaupp's reply of "okay" constituted consent because it showed that Kaupp realized that he was going to be questioned at the police station.[163] In addition, at the police station, Kaupp was read his *Miranda* rights, which he understood and waived.[164] Thus, the court found, as a conclusion of law, the confession Kaupp gave after the 3:00 a.m. visit to his house "was given freely and voluntarily . . . [without] coercion, threats, violence nor promise made to the Defendant in exchange for his agreeing to give said statement."[165] Since the confession was not coerced and the police did not arrest Kaupp before he gave his confession, it was not the fruit of an illegal arrest and thus admissible.[166]

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[155] Kaupp v. Texas, No. 14-00-00128-CR, 2001 WL 619119, at *1 (Tex. Ct. App. June 7, 2001) (not designated for publication).

[156] *Kaupp*, 123 S. Ct. at 1845.

[157] *Id.*

[158] *Id.*

[159] Appellant's Petition at 2, *Kaupp* (No. 02-5636).

[160] *Kaupp*, 2001 WL 619119 at *1.

[161] *Id.*

[162] *Kaupp*, 123 S. Ct. at 1845.

[163] Cause No. 803,792, *supra* note 153, at 3.

[164] *Id.* at 3-4.

[165] *Id.* at 5.

[166] *Id.*

B. THE DECISION OF THE COURT OF APPEALS

Kaupp appealed his conviction on the grounds that his confession should have been suppressed.[167] The court of appeals affirmed the district court's refusal to suppress the confession.[168] The court held that the appropriate test for whether Kaupp consented to the police encounter was to determine if "a reasonable person would feel free to 'disregard the police and go about his business.'"[169] The totality of the circumstances must be considered in making the determination of whether consent was voluntary.[170]

The court of appeals looked at the totality of the circumstances and concluded that Kaupp consented to the encounter because "a reasonable person in [Kaupp's] situation would have felt free to say 'no' or otherwise to disregard [the detective] and go about his business."[171] First, Kaupp's statement of "okay" signified his consent to going to the police station for questioning.[172] Second, although Kaupp was handcuffed, the court found that no bright-line test existed that equated handcuffing with an arrest.[173] Since Kaupp was familiar with the procedure of handcuffing as a safety measure because he had ridden in a patrol car the previous day, the court failed to find that he had been arrested.[174] In addition, the court found Kaupp's failure to resist the police or otherwise act uncooperatively pointed toward the finding that Kaupp did not believe he was under arrest.[175] After considering all of these circumstances, the court found that Kaupp was not under arrest before he confessed.[176] Since no arrest had occurred, his confession could be admitted because it was not the product of an illegal arrest.[177] Kaupp again appealed to the Court of Criminal Appeals of Texas, but was denied discretionary review.[178] The Supreme Court granted Kaupp's writ of certiorari to decide whether his confession should have been suppressed.

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[167] Kaupp v. Texas, No. 14-00-00128-CR, 2001 WL 619119, at *1 (Tex. Ct. App. June 7, 2001) (not designated for publication). Kaupp also appealed on two other grounds, which are irrelevant for this discussion.

[168] *Id.* at *3.

[169] *Id.* at *3 (quotations omitted).

[170] *Id.* (citing Lackey v. State, 638 S.W.2d 439, 447 (Tex. Crim. App. 1982)).

[171] *Id.*

[172] *Id.*

[173] *Id.* at *4.

[174] *Id.*

[175] *Id.*

[176] *Id.*

[177] *Id.* at *2.

[178] *Kaupp*, 123 S. Ct. at 1845.

V. SUMMARY OF OPINION

In a per curiam opinion, the Supreme Court vacated the judgment of the state court of appeals and held that Kaupp's confession must be suppressed unless the state had undisclosed evidence that would overcome the evidence on the record.[179] The Court found that Kaupp had been illegally arrested prior to his confession.[180] Further, his confession should have been suppressed because it was not a product of his free will and thus was a fruit of an illegal arrest.[181]

The Court followed the test outlined in *Mendenhall* and *Bostick* to determine that a seizure in violation of the Fourth Amendment had occurred.[182] The Court stated that the totality of the circumstances must be considered to determine whether or not a reasonable person would have felt that he could have ignored the police presence and continue about his business.[183] If a reasonable person under these circumstances would have felt that he could not have ignored the police presence, then an unreasonable seizure occurred.[184] According to *Mendenhall*, courts should consider certain circumstances including "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled."[185] In this case, the Court found every circumstance from *Mendenhall* to be present.[186] At least three police officers awakened Kaupp in the middle of the night.[187] Physical touching occurred as Kaupp was handcuffed and taken from his home to the police car.[188] In addition, Kaupp did not consent to the arrest.[189] His statement of "okay" after being told by one of the officers that "we need to go and talk" was not a manifestation of his consent under these circumstances.[190] The Court viewed Kaupp's statement of "okay" as "a mere submission to a claim of lawful authority."[191] Further, the Court found that no "reasonable person in

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[179] *Id.* at 1848.
[180] *Id.* at 1847.
[181] *Id.*
[182] *Id.* at 1845-46.
[183] *Id.* at 1845.
[184] *Id.*
[185] *Id.* at 1846 (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)).
[186] *Id.*
[187] *Id.*
[188] *Id.*
[189] *Id.* at 1847.
[190] *Id.*
[191] *Id.*

[Kaupp's] situation would have thought he was sitting in the interview room as a matter of choice, free to change his mind and go home to bed."[192]

Since his confession was not "an act of free will sufficient to purge the primary taint of the unlawful invasion," it had to be suppressed.[193] The Court considered the factors outlined in *Brown* in determining that the confession was the fruit of an illegal arrest.[194] The Court found that the only factor weighing against suppression was that Kaupp had been given his *Miranda* warnings.[195] However, for the purposes of Fourth Amendment analysis, *Miranda* warnings alone are not enough to sever "the causal connection between the illegality and the confession."[196] In considering the other factors, the Court found that little time had passed between the illegal arrest and the confession, there were no meaningful intervening circumstances, and the officers knew that they did not have probable cause to arrest Kaupp.[197] Thus, the confession had to be suppressed absent further evidence to the contrary.[198]

VI. ANALYSIS

The Supreme Court correctly decided to suppress the confession in *Kaupp*. The lack of probable cause, the invasion of the privacy of the home, and the application of the free-to-leave test all point to the conclusion that the police illegally seized Kaupp. The attenuation analysis of the exclusionary rule demonstrates that the appropriate remedy to this Fourth Amendment violation is the suppression of Kaupp's confession. Furthermore, the tests and analyses that the Court sets forth in *Kaupp* provide clear precedent to lower courts as to how to analyze cases involving the Fourth Amendment and unreasonable seizures. The Court has not always been protective of Fourth Amendment rights,[199] however, when faced with Kaupp's situation, the Court had no choice but to come to the conclusion that a Fourth Amendment violation had occurred. *Kaupp* increased the Supreme Court's awareness of the existence of police conduct

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[192] *Id.*

[193] *Id.* (quoting Wong Sun v. United States, 371 U.S. 471, 486 (1963)).

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] *Id.* at 1848.

[198] *Id.*

[199] The Court has applied its tests and analyses to find that the seizure was reasonable and not a Fourth Amendment violation in cases where strong privacy interests are present. *See, e.g.*, Florida v. Bostick, 501 U.S. 429, 437 (1991) (stating that "[t]he facts of this case . . . leave some doubt whether a seizure occurred"); United States v. Mendenhall, 446 U.S. 544, 555 (1980).

that violates the Fourth Amendment and the need for courts to scrutinize more closely such conduct. As a result, a lesser degree of deference may be given to police conduct where the constitutionality of the police conduct is in question.

A. THE PRINCIPLES OF FOURTH AMENDMENT JURISPRUDENCE RENDER THE COURT'S DECISION CORRECT

The Court's holding here appears to be the obvious conclusion, making it a somewhat "unremarkable" decision.[200] The details of the Houston police's visit to Kaupp's home are striking in how every circumstance points toward the occurrence of an unreasonable seizure.[201] The police did not have probable cause when they entered Kaupp's home. Further, a reasonable person in Kaupp's position would not feel free to leave the presence of the police. Allowing this seizure would not be in accordance with the purpose of the Fourth Amendment—to protect those who desire to live without arbitrary government intrusion.[202] These factors all point toward the conclusion that Kaupp's Fourth Amendment rights were violated and that his confession should be suppressed. Even though the Court often narrowly construes the scope of Fourth Amendment rights,[203] Kaupp's police encounter constitutes an arbitrary government intrusion that meets all of the various Supreme Court standards in showing that a seizure occurred and the subsequent confession should be suppressed.

1. Kaupp was Illegally Seized

The Court's finding that Kaupp was seized within the meaning of the Fourth Amendment was proper. While the Court has had varying views of

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[200] Craig M. Bradley, *Texas 'Justice'*, 2003 SUP. CT. REV. 64, 64. What Mr. Bradley did find remarkable was "that this blatant violation of the law by the Houston police was upheld by the Texas Court of Appeals, causing the U.S. Supreme Court to abandon its usual role of resolving conflicts among the lower courts to instead right a wrong in an individual case." *Id.*

[201] *See Kaupp*, 123 S. Ct. at 1846-47.

[202] *See* Scott E. Sundby, *Everyman's Fourth Amendment: Privacy or Mutual Trust Between Government and Citizen?*, 94 COLUM. L. REV. 1751, 1810 (1994) (stating the effects of arbitrary government intrusion to be that "human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police") (quoting Brinegar v. United States, 338 U.S. 160, 180-81 (1949) (Jackson, J., dissenting)).

[203] Andrew E. Taslitz, *Respect and the Fourth Amendment*, 94 J. CRIM. LAW & CRIMINOLOGY 15, 20 (2003) (stating that "the general trend is to narrow the scope of Fourth Amendment rights and, even when such rights are recognized, to narrow still further when the exclusionary remedy will be available to enforce the Amendment").

what constitutes an arrest,[204] it has generally looked to at least one of the following factors: whether probable cause existed for the arrest; whether the arrest occurred in the home or a public place; and whether a reasonable person in the individual's position would feel free to leave the presence of the police.

a. The Police Did Not Have Probable Cause to Seize Kaupp

The degree of police intrusion that Kaupp experienced exceeded that of the stop-and-frisk scenario in *Terry* where the police officer approached the suspect on the street.[205] Thus, the police needed to show probable cause in order to justify their encounter with Kaupp. The police failed to make such a showing.

First, probable cause cannot be found from the informant's, Nicholas Thetford's, tip. The application of the totality of the circumstances test of *Gates* to Nicholas's implication of Kaupp in the murder of his half-sister does not result in a showing of probable cause.[206] While Nicholas likely had a basis of knowledge to make the implication because he and Kaupp were together the day Destiny was murdered, the other considerations—veracity and reliability of the informant—weigh toward a showing of no probable cause because Nicholas's confession could not be authenticated and he did not prove himself to be trustworthy or reliable. Nicholas had failed three polygraphs earlier that day,[207] which indicates that he has a propensity to lie. Although Nicholas revealed the location of his half-sister's body, the police were able to corroborate his story by going to the named location and finding her body.[208] However, the police, through its own work, could not reasonably corroborate Nicholas's implications of Kaupp's involvement in the murder.[209] Considering the totality of these circumstances, Nicholas's tip cannot demonstrate that the police had probable cause to arrest Kaupp.

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[204] *See* Thomas K. Clancy, *What Constitutes an "Arrest" Within the Meaning of the Fourth Amendment?*, 48 VILL. L. R. 129, 141-66 (2003). Clancy finds

> [t]he Supreme Court's pronouncements of what constitutes an arrest within the framework of the Fourth Amendment are numerous and irreconcilable. Since 1968 . . . numerous "visions" of what constitutes an arrest have been set forth, with little or no attempt to harmonize the concept set forth in one case with competing visions in other cases.

Id. at 142.

[205] *See* Terry v. Ohio, 392 U.S. 1, 6-7 (1968).

[206] *See* Illinois v. Gates, 462 U.S. 213, 230-31 (1983).

[207] *Kaupp*, 123 S. Ct. at 1845 n.1.

[208] *Id.* at 1845.

[209] *Id.* at 1845 n.1.

Second, the police did not have a warrant for Kaupp's arrest. Since a warrant is only issued upon a showing of probable cause, the absence of a warrant indicates that the police did not have probable cause.[210] The "pocket warrant" that the police attempted to obtain was denied.[211] The police did not even attempt to obtain a conventional arrest warrant.[212] The inability to obtain a warrant for Kaupp's arrest or detainment for questioning shows that the police did not have probable cause to arrest Kaupp.

Third, even if probable cause was present despite the failure to secure a warrant, no exigent circumstances existed that would cause the Court to find that the warrantless seizure was nonetheless reasonable. None of the "special law enforcement needs" stated in *McArthur* were present in Kaupp's situation.[213] Kaupp did not have any diminished privacy expectations. He was asleep in his home and likely did not feel he had any less privacy than usual. In addition, the police intrusion Kaupp experienced was by no measure minimal. The presence of six or seven police officers and several patrol cars at 3:00 a.m. at Kaupp's home cannot be considered minimal. Kaupp was also handcuffed and taken to the police station—again, this does not constitute a minimal intrusion. Further, the preservation of evidence was not a concern like it was in *McArthur* because the police merely wanted to question Kaupp and did not have a reasonable concern that Kaupp may be destroying evidence.

Lastly, Kaupp's situation is very similar to the defendant's experience in *Dunaway*. Like Dunaway, Kaupp was picked up and brought to the police station to be questioned about a recent murder.[214] Another similarity is that the police in *Dunaway* were also unable to obtain an arrest warrant. Like Dunaway, Kaupp was put in an interrogation room and given *Miranda* warnings. In *Dunaway*, the Court found that the police conduct violated the Fourth Amendment. Similarly, the Court in *Kaupp* found a Fourth Amendment violation, and the similarity of the police conduct in these two scenarios supports this finding.

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[210] A warrant can be evidence that probable cause for the arrest exists since the Fourth Amendment requires that "no Warrants shall issue but upon probable cause . . . ." U.S. CONST. amend. IV; *see also* LAFAVE ET AL., *supra* note 23, at 166.

[211] *Kaupp*, 123 S. Ct. at 1845.

[212] *Id.* at 1845 n.1.

[213] *See* Illinois v. McArthur, 531 U.S. 326, 330 (2001).

[214] *See* Dunaway v. New York, 442 U.S. 200, 202-03 (1979).

b. The Police Seized Kaupp in his Home

Another factor that the Court has considered in its Fourth Amendment jurisprudence is the location of the arrest. Fourth Amendment jurisprudence must balance an individual's privacy expectations against the government's law enforcement interests.[215] The Court generally is more protective of seizures that result from a warrantless police intrusion into a private home.

In this case, Kaupp's expectation of privacy in his own home exceeded the government's interest in law enforcement, especially since the police were unable to obtain a warrant to arrest him. If Kaupp's seizure had been deemed legal, then police officers would be able to approach almost anyone at three o'clock in the morning in their homes to bring them in for questioning after another suspect, without corroboration, implicated them in a crime. The public would be at a greater risk of being the target of such an arbitrary government intrusion. These types of arbitrary governmental intrusions were the "chief evil" that the Framers were concerned about and wanted to prevent from occurring.[216] Allowing these intrusions would signify the Court's failure as the branch of government that sets "a constitutional floor protecting individuals and constraining government."[217]

Even if probable cause were present, no exigent circumstances existed to justify the police intrusion into Kaupp's home. Although Kaupp was to be questioned regarding a felony offense, and not a minor traffic violation like the defendant in *Welsh v. Wisconsin*, no exigent circumstances were present. Unlike the defendant in *Santana*, Kaupp did not flee from the police nor were the police in hot pursuit of Kaupp at the time of his arrest. Kaupp had a legitimate expectation of privacy in his home, which the police intruded upon.

Kaupp's transportation to the police station further indicates that a Fourth Amendment violation occurred. Like the defendant's "consent" in *Hayes*, Kaupp's statement of "okay" did not constitute consent to being transported to the police station.[218] The police officers in *Kaupp*, like the officers in *Hayes*, did not have probable cause nor judicial authorization of

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[215] Thomas K. Clancy, *The Future of Fourth Amendment Seizure Analysis After* Hodari D. *and* Bostick, 28 AM. CRIM. L. REV. 799, 800 (1991).

[216] *See* Payton v. New York, 445 U.S. 573, 585 (1980).

[217] Taslitz, *supra* note 203, at 28 (quoting Erik G. Luna, *Sovereignty and Suspicion*, 48 DUKE L.J. 787, 787 (1999)) (noting that all branches of government have simultaneous duties to respect all citizens and enforce the law).

[218] *See* Hayes v. Florida, 470 U.S. 811, 813 (1985).

their conduct.[219] Thus, the officers' transport of Kaupp to the police station to obtain evidence weighs toward a conclusion of an illegal seizure.

c. The Police Conduct Failed the Free-to-Leave Test

A reasonable person in Kaupp's position during the police encounter would not have felt that he was free to leave. The police's show of authority and use of physical force in going to Kaupp's home, awakening him, handcuffing him and transporting him to the police station demonstrate that a seizure occurred. Under the analysis set forth in *Mendenhall* and *Bostick*, Kaupp's seizure was unreasonable.

Handcuffing Kaupp restrained his freedom of movement, and the handcuffs were not removed until Kaupp was taken to the interrogation room.[220] This physical contact constituted the physical force necessary to find an arrest. Further, Kaupp submitted to the officers' show of authority. The police officers showed their authority by arriving en masse at Kaupp's home and telling Kaupp that "'we need to go and talk.'"[221] Kaupp submitted to this show of authority by answering "'okay'" and getting out of bed to go to the police station with the officers.[222] His lack of struggle with the officers evidences his submission.[223]

Kaupp also likely felt that he was unable to leave this police presence. All of the factors in the *Mendenhall* are present, and the totality of the circumstances communicated to Kaupp that he was not free to leave. These factors have probative value even in the absence of resistance to the police. The first factor, "the threatening presence of several officers," is met by the presence of six or seven officers in addition to several patrol cars.[224] Three officers entered Kaupp's home, which constitutes a "threatening presence," especially since they authoritatively entered Kaupp's home in the middle of the night. The second factor, the display of a weapon, is disputed because the parties disagree on whether a weapon was displayed.[225] Nonetheless, the officers showed their authority by handcuffing Kaupp and leading him, shoeless, outside to the patrol car. This conduct satisfies the third factor of

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[219] *See id.* at 812.

[220] *Kaupp*, 123 S. Ct. at 1845.

[221] *See id.*

[222] *See id.* at 1845, 1847.

[223] *See id.* at 1847.

[224] *See* United States v. Mendenhall, 446 U.S. 544, 554 (1980).

[225] The state court of appeals stated that the officers were armed and that one officer's weapon was visible at the time they confronted Kaupp in his bedroom. *Kaupp*, 123 S. Ct. at 1846 n.3. However, "at least one officer testified before the trial court that they went to Kaupp's house unarmed." *Id.*

the presence of physical touching. The officer's statement of "we need to go and talk" fulfills the last factor, "the use of language or tone of voice indicating that compliance with the officer's request might be compelled."[226] The officer's statement does not give Kaupp any indication that he could refuse the officer's request. Instead, it implies that Kaupp would be forced to "go and talk" even if he resisted the request.

A reasonable person, when faced with these factors and circumstances, would not feel free to leave this police presence. After being awakened in the middle of the night at home and confronted with six or seven police officers, a reasonable person would likely feel that she would be compelled to obey the police. Further, after being handcuffed and led to the patrol car in nothing more than a T-shirt, boxer shorts, and socks, a reasonable person would conclude that she was not free to leave or otherwise terminate this police encounter.

2. The Court Appropriately Applied the Exclusionary Rule

The Court's finding that Kaupp's confession should be suppressed was also proper. The primary sanction for Fourth Amendment violations is the exclusionary rule.[227] The application of the attenuation analysis was appropriate because here, unlike the absence of an underlying illegality in *New York v. Harris*, an underlying illegality had occurred—the seizure despite the absence of probable cause. Since Kaupp's Fourth Amendment rights were violated, correctly applying the exclusionary rule will further the purposes of the rule.

a. The Court's Holding Achieves the Purposes of the Exclusionary Rule

Both purposes of the exclusionary rule are realized through the exclusion of Kaupp's confession. One purpose of such a rule is to deter police officers from illegal conduct.[228] The other purpose is to maintain the integrity of the judiciary.[229]

First, the suppression of Kaupp's confession will serve to deter future police conduct of this nature. Knowing that this type of conduct will not be

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[226] *Mendenhall*, 446 U.S. at 554.

[227] Yarcusko, *supra* note 4, at 266.

[228] *Id.*

[229] *Id.* This policy justification has been weakened in *Leon*, where "the Court held that evidence was admissible where it was seized by police officers acting in good faith reliance on a warrant later found to be invalid." *Id.*; *see* United States v. Leon, 468 U.S. 897 (1984). The Court did not consider preservation of judicial integrity a concern, and only looked to the deterrence function of the exclusionary rule as a justification for suppressing evidence. Yarcusko, *supra* note 4, at 267.

tolerated by courts will serve to encourage police officers to respect an individual's Fourth Amendment rights.[230] This will make officers more likely to obtain a warrant or at least more likely to make sure that probable cause is present before a seizure occurs. Otherwise, any evidence or statements that they obtain as a result of this illegal seizure will likely be suppressed. A stronger adherence to the exclusionary rule, exemplified by the suppression of Kaupp's confession, increases the incentive for police officers to obtain the proper judicial authorization before becoming involved in such encounters with suspects. This incentive increases because a stronger adherence to the exclusionary rule will also increase the probability that any evidence obtained will be excluded from trial.

In addition, judicial approval of such police conduct would diminish the integrity of the courts. The public would lose confidence in the judiciary as the defender of the Constitution if courts allow tainted evidence to be admissible at trial. The police would become the boundary-setters of the Fourth Amendment, a job reserved for the courts. Even though the exclusionary rule at times makes it more difficult to convict guilty defendants, courts that strongly adhere to the exclusionary rule demonstrate the judiciary's commitment to preventing unjustified governmental intrusions.[231]

b. The Attenuation Analysis was Correctly Applied

Application of the attenuation analysis, which was first outlined in *Wong Sun* and then elaborated on in *Brown,* to Kaupp's situation results in the conclusion that his statements should have been suppressed. The Supreme Court reached this same conclusion,[232] and a closer examination of the *Brown* factors[233] reveals that the Court's decision was proper. After the Court correctly determined that Kaupp was illegally seized, it next had to determine whether his confession should be suppressed. In accordance with "well-established precedent," the Court recognized that Kaupp's confession had to be suppressed "unless that confession was 'an act of free will [sufficient] to purge the primary taint of the unlawful invasion.'"[234] The facts of Kaupp's case must be closely looked at because even though he was given his *Miranda* warnings, this factor is not dispositive, and alone

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[230] *See* Taslitz, *supra* note 203, at 28.

[231] *See id.* at 86.

[232] *Kaupp*, 123 S. Ct. at 1847-48.

[233] *See* Brown v. Illinois, 422 U.S. 590, 603-04 (1975).

[234] *Kaupp*, 123 S. Ct. at 1847 (quoting Wong Sun v. United States, 371 U.S. 471, 486 (1963)).

cannot assure that the Fourth Amendment has not been violated.[235] The attenuation analysis requires a more searching examination of the following factors—the temporal proximity of the arrest and confession, the presence of any intervening circumstances, and the purpose and flagrancy of the officers' misconduct.[236]

First, the temporal proximity of the arrest and confession point toward the exclusion of the confession. Kaupp confessed after about ten or fifteen minutes in the interrogation room,[237] and his confession occurred after the police officers presented him with his friend's (the victim's half-brother's) confession.[238] A substantial amount of time had not passed between Kaupp's awakening by police officers and his subsequent confession. He was put into a patrol car shortly after being roused from sleep.[239] The only stop made before arriving at the police station was a detour to the site where the victim's body was being recovered.[240] Thus, the temporal proximity of the seizure and confession does not remove the taint of the illegal seizure and does not make the confession a product of Kaupp's free will.

Second, no intervening circumstances were present. No event occurred to make Kaupp believe that he was not under arrest. In addition, the officers did not do anything to make him feel that he was not under arrest. They had him handcuffed and led out of his house in the middle of the night with nothing on except boxer shorts and a T-shirt—he did not even have his shoes on.[241] The burden of proof lies with the prosecution to show that Kaupp's confession was voluntary. However, the state has not put forth any evidence that a "meaningful intervening event" occurred which would purge the taint of the illegal arrest.[242] This factor also points toward the conclusion that the confession was not a product of Kaupp's free will.

The third factor, the purpose and flagrancy of the officers' misconduct, also points toward suppression of Kaupp's confession. The Supreme Court did not discuss this factor in its opinion in *Kaupp*. However, the Court likely felt that this factor also pointed toward suppression.[243] Like the

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[235] *See Brown*, 422 U.S. at 603.

[236] *See id.* at 603-04.

[237] *Kaupp*, 123 S. Ct. at 1845.

[238] Cause No. 803,792, *supra* note 153, at 5.

[239] Appellant's Petition at 2, *Kaupp* (No. 02-5636).

[240] *Id.*

[241] *Kaupp*, 123 S. Ct. at 1845.

[242] *Id.* at 1848.

[243] *Id.* at 1847-48. The Court stated the *Brown* factors, including this third factor—the purpose and flagrancy of the official misconduct. *Id.* at 1847. The Court then went on to state that the *Brown* factors, with the exception of the giving of the *Miranda* warnings, point

officers in *Brown*, the police officers here knew that they could not obtain a warrant before going to Kaupp's house.[244] Despite being refused the warrant, the officers nevertheless decided to get Kaupp into custody and try to obtain a confession from him.[245] Even one of the police officers believed that Kaupp was being placed under arrest.[246] Thus, the officers quite purposefully decided to engage in this misconduct. Further, the officers' misconduct was flagrant. Having six police cars arrive at Kaupp's house and stationing a large number of officers at various locations around Kaupp's house appear to be flagrant showings of police power.[247] Three police officers knocked on the front door, and upon finding Kaupp, began to handcuff him.[248] The handcuffs were not removed until he was placed in the interrogation room.[249] The officers even searched his house.[250] These events demonstrate the purposefulness and flagrancy of the officers' misconduct and, like the police encounter in *Brown*, the events in the present case were "calculated to cause surprise, fright, and confusion."[251]

A more detailed attenuation analysis of Kaupp's case shows that the Supreme Court's conclusion was correct.[252] After considering all of the factors, Kaupp's confession cannot be deemed to be an act of free will because all of the factors, with the exception of the reading of his *Miranda* rights, demonstrate that the primary taint of the illegal seizure had not been purged. No event had occurred to break the causal connection between the police officers' illegal conduct and Kaupp's subsequent confession.

B. THE COURT'S USE OF THE *MENDENHALL* TEST GIVES LOWER COURTS A CLEARER STANDARD AND SENDS THE MESSAGE THAT FOURTH AMENDMENT VIOLATIONS WILL NOT BE TOLERATED

The Supreme Court's decision in *Kaupp* provided support for two tests concerning Fourth Amendment jurisprudence: the reasonable person test regarding seizures stated in *Bostick* and derived from *Mendenhall*,[253] and the attenuation analysis regarding the admissibility of evidence obtained as

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toward the conclusion that "the causal connection between the illegality and the confession" had not been broken. *Id.* (quoting Brown v. Illinois, 422 U.S. 590, 603 (1975)).

[244] *Id.* at 1845; *see Brown*, 422 U.S. at 605.

[245] Appellant's Petition at 2, *Kaupp* (No. 02-5636).

[246] Cause 803,792, *supra* note 153, at 3.

[247] Appellant's Petition at 2, *Kaupp* (No. 02-5636).

[248] *Id.*

[249] *Kaupp*, 123 S. Ct. at 1845.

[250] Appellant's Petition at 2, *Kaupp* (No. 02-5636).

[251] *See* Brown v. Illinois, 422 U.S. 590, 605 (1975).

[252] *See Kaupp*, 123 S. Ct. at 1847-48.

[253] *Id.* at 1845-46.

a result of an illegal arrest from *Wong Sun* and *Brown*.[254] These tests have been used by the lower courts to determine respectively whether a person has been illegally seized outside of the permissible limits of *Terry* and whether evidence obtained as a result should be admissible. The Supreme Court also realized the potential widespread nature of Fourth Amendment violations due to a courts' finding that a person's submission to authority constitutes consent to the seizure.[255] The lower courts have taken this into consideration when applying the reasonable person test[256] and attenuation analysis.[257] As a result, many of these decisions have recognized the sanctity of the Fourth Amendment and have been protectionist toward individuals in order to prevent illegal and/or arbitrary intrusions.[258]

1. Lower Courts are Recognizing the Importance of Protecting Fourth Amendment Rights

Lower courts, like the Supreme Court, have recognized that "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."[259] Further, lower courts have also acknowledged that "[the police] may [not] seek to verify [mere] suspicions by means that approach the conditions of [a full custodial] arrest."[260] Some

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[254] *Id.* at 1847.

[255] *Id.* The Court plainly stated that "Kaupp's 'okay' in response to [the police officer's] statement is no showing of consent under the circumstances . . . . There is no reason to think Kaupp's answer was anything more than a 'mere submission to a claim of lawful authority.'" *Id.* (quoting Florida v. Royer, 460 U.S. 491, 497 (1983)).

[256] *See, e.g.*, Hayes v. State, 794 N.E.2d 492 (Ind. Ct. App. 2003); State v. Evans, 582 S.E.2d 407 (S.C. 2003).

[257] *See, e.g.*, United States v. Green, 277 F. Supp. 2d 756 (E.D. Mich. 2003); Hunt v. Commonwealth, 585 S.E.2d 827 (Va. Ct. App. 2003).

[258] *See, e.g.*, United States v. Lopez-Arias, 344 F.3d 623 (6th Cir. 2003) (affirming district court's decision to suppress evidence obtained after a seizure that occurred without probable cause or consent); Hatheway v. Thies, 335 F.3d 1199 (10th Cir. 2003) (holding that defendant did not consent to questioning at police station); *Green*, 277 F. Supp. 2d at 756 (granting defendant's motion to suppress confession evidence after only *Brown* factor met was that defendant received *Miranda* warnings); Dejesus v. Village of Pelham Manor, 282 F. Supp. 2d 162 (S.D.N.Y. 2003) (denying summary judgment to defendants on ground that a genuine issue of material fact remained as to whether or not the plaintiffs felt free to leave during their encounter with the defendant); Johnson v. Campbell, 332 F.3d 199 (Del. 2003) (holding that detention of defendant solely based on a citizen's suspicions that he was engaged in criminal activity insufficient to justify seizure); *Evans*, 582 S.E.2d 407 (suppressing confession proper after *Miranda* warnings not given and where defendant not free to leave police encounter); *Hunt*, 585 S.E.2d 827 (finding an illegal seizure where police officer stated that he would search defendant after handcuffing him and defendant submitted to officer's show of authority).

[259] *Hayes*, 794 N.E.2d at 495.

[260] *Hunt*, 585 S.E.2d at 834 (citing *Kaupp*, 123 S. Ct. at 1845).

courts have used their own factors in determining whether a person has been taken into custody.

For example, in *State v. Evans*, the Supreme Court of South Carolina considered the following factors in its totality of the circumstances analysis: "place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning."[261] In *Evans*, the defendant was suspected of setting fire to her mobile home, which killed her three children.[262] The defendant signed a "voluntary statement" after a three hour interview during throughout which she "remained emotionally unstable . . . [and] continuously asked the agents 'to get her some help.'"[263] Although she was never read her *Miranda* rights, the court found that the totality of the circumstances suggested that she was in a custodial interrogation setting—she was not free to leave, an agent accompanied her to the bathroom at all times, her cousin was not allowed to see her, she was interviewed in a back office, the interview was of a lengthy duration, and the purpose of the interview was to extract a confession.[264]

However, while some courts have recognized the importance of preventing arbitrary governmental intrusions, they have nonetheless held that such police encounters are lawful.[265] In *Hayes*, the court found a "knock and talk" investigation lawful.[266] Police officers knocked on the defendant's motel room door after receiving a tip that the defendant was dealing drugs out of this motel room.[267] The defendant opened the door and let the officers in after they showed him their badges.[268] The officers saw marijuana on the dresser and asked to "look around the room for weapons" whereupon they found crack cocaine in the bathroom.[269] The defendant was arrested, and his motion to suppress the drugs obtained was denied.[270] In determining that no illegal seizure had occurred, the court looked to the totality of the circumstances, as outlined in *Kaupp*.[271] The court found that the factors considered in *Kaupp* (the threatening presence of several officers, display of a weapon, physical touching, use of language or tone of voice indicating compliance would be compelled) did not point toward an

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[261] *Evans*, 582 S.E.2d at 410.

[262] *Id.* at 408-09.

[263] *Id.* at 409.

[264] *Id.* at 410.

[265] *See* Hayes v. State, 794 N.E.2d 492, 498 (Ind. Ct. App. 2003).

[266] *Id.*

[267] *Id.* at 493.

[268] *Id.* at 493-94.

[269] *Id.* at 494.

[270] *Id.*

[271] *Id.*

illegal seizure.[272] Although several officers were present, there was no evidence that they had "pounded on the door or had drawn their weapons .... [or] that any of the officers [had] raised their voices or commanded Hayes to let them into the motel room."[273] Although the court recognized the intimidating nature of the unexpected arrival of armed police officers at one's motel room door, it did not feel that the facts of this case clearly warranted the finding that an illegal seizure had occurred.[274]

Once an arrest has been deemed illegal, the exclusionary rule determines whether or not inculpatory statements made subsequent to arrest are admissible.[275] The Court's holding in *Kaupp* provides support for this "well established precedent" of *Wong Sun* and *Brown* and provides guidance for the lower courts in applying the attenuation analysis.[276] For instance, in *Hunt v. Commonwealth*, the Court of Appeals of Virginia held that the defendant's admission was fruit of an illegal seizure and should be suppressed.[277] In coming to its conclusion, the court relied on the precedent set in *Kaupp*, *Wong Sun*, and *Brown* in applying the *Brown* factors.[278] An off-duty police officer handcuffed the defendant in *Hunt* and brought him to the apartment rental office upon finding the defendant on the premises after he was banned from the property.[279] He read the defendant his *Miranda* rights, and a search revealed that the defendant was carrying a firearm and cocaine.[280] The court found that although the defendant was read his *Miranda* rights and the official misconduct was deemed unintentional, other considerations, such as the temporal proximity of the arrest and the admission and the flagrancy of the misconduct (officer's statement that defendant would be better off if he admitted having contraband than if officer found it), compelled the suppression of the statements.[281]

2. Distinguishing Between Voluntary and Coerced Consent

In *Kaupp*, the Supreme Court stated that Kaupp's response of "okay" to the officer's statement of "we need to go and talk" was "no showing of consent under the circumstances" since the officers gave him no choice and

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[272] *Id.*
[273] *Id.*
[274] *Id.*
[275] *See Kaupp*, 123 S. Ct. at 1847.
[276] Hunt v. Commonwealth, 585 S.E.2d 827, 836 (Va. Ct. App. 2003).
[277] *Id.*
[278] *Id.*
[279] *Id.* at 829.
[280] *Id.*
[281] *Id.* at 836.

such an encounter would seem to present no option but "to go."[282] The Court plainly differentiated between consent to a police encounter and "mere submission to a claim of lawful authority."[283] The Court has not always felt this way.[284] The dissent's view of the circumstances surrounding consent in *Mendenhall*[285] and *Bostick*[286] are similar to the views of the Court in *Kaupp*. The *Mendenhall* dissent recognized that "consent cannot be presumed from a showing of acquiescence to authority . . . ."[287] Although the defendant in Mendenhall was never told she was under arrest, "she in fact was not free to refuse to go to the DEA office . . . . [and] would not have been permitted to leave without submitting to a strip-search."[288] Thus, even though she accompanied the police officer to the DEA office, she did not consent to this police encounter.[289] Further, the state did not meet its burden of proving consent—no evidence was presented that concerned "what she said, if anything, when informed that the officers wanted her to come with them to the DEA office."[290]

Similarly, in *Bostick*, the dissent considered the cramped confines of a bus and its stops of limited duration point toward the finding that "the passengers are in no position to leave as a means of evading the officers' questioning."[291] The court found that the police officers displayed an intimidating "show of authority" when they boarded the bus, visibly displayed their badges, and where one officer had a gun in a recognizable weapons pouch.[292] The only options that the defendant had were to either obstinately refuse to answer any questions or to leave the bus.[293] Neither option would have been feasible in this case.[294] The dissent acknowledged

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[282] *Kaupp*, 123 S. Ct. at 1846, 1847.

[283] *Id.* at 1847.

[284] *See* Florida v. Bostick, 501 U.S. 429 (1991); United States v. Mendenhall, 446 U.S. 544 (1980).

[285] *Mendenhall*, 446 U.S. at 566-67, 574 (White, J., dissenting).

[286] *Bostick*, 501 U.S. at 442-50 (Marshall, J., dissenting).

[287] *Mendenhall*, 446 U.S. at 566-67 (White, J., dissenting).

[288] *Id.* at 574-75 (White, J., dissenting).

[289] *Id.* at 576 (White, J., dissenting).

[290] *Id.* (White, J., dissenting).

[291] *Bostick*, 501 U.S. at 442 (Marshall, J., dissenting).

[292] *Id.* at 446 (Marshall, J., dissenting).

[293] *Id.* at 447 (Marshall, J., dissenting).

[294] *Id.* (Marshall, J., dissenting). If the defendant refused to cooperate, it is likely that "such behavior would only arouse the officers' suspicions and intensify their interrogation." *Id.* (Marshall, J., dissenting). Further, the defendant did not know whether the officers would even allow him to leave the bus since leaving would entail "squeez[ing] past the gun-

this reality and found that an illegal seizure could occur even though the defendant's "freedom of movement was restricted by a factor independent of police conduct—i.e., by his being a passenger on a bus."[295]

The Court of Appeals of Indiana followed this line of reasoning in *Hayes v. State*.[296] While the court held that an illegal seizure had not occurred, the court spent much of its opinion stressing the importance of the Fourth Amendment and how most people would ordinarily submit to a show of lawful authority, regardless of whether it was legal or illegal official conduct.[297] The court "agree[d] that residents of a home are not likely to deny a police officer's request to enter, either because they are ignorant of the law or are simply 'too stunned by the circumstances to make a reasoned decision about whether or not to consent to a warrantless search . . . .'"[298]

The Court, in recognizing that consent may merely be a submission to authority, has also recognized that coerced confessions should not be used. The coerced confession itself, in addition to the manner in which it was extracted, violates the Constitution.[299] Such a confession is the result of an unreasonable search or seizure in violation of the Fourth Amendment.[300] "[T]he statement and its fruits are excludable from trial pursuant to the ordinary workings of the exclusionary rule."[301] The Court's increasing awareness of the existence and dangers of manifestations of consent that do not accurately reflect a suspect's approval of a subsequent police encounter may lead it and lower courts to be more probative in determining whether evidence should be suppressed.

VII. CONCLUSION

The Supreme Court in *Kaupp v. Texas* correctly applied the reasoning of previous Fourth Amendment cases to determine that an illegal seizure had occurred in Kaupp's case. The Court properly reasoned, using the analyses set forth in *Mendenhall* and *Brown*, that the confession obtained as

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wielding inquisitor who was blocking the aisle of the bus . . . ." *Id.* at 448 (Marshall, J., dissenting).

[295] *Id.* at 449 (Marshall, J., dissenting) (quoting *Bostick*, 501 U.S. at 436).

[296] 794 N.E.2d 492, 496-98 (Ind. Ct. App. 2003).

[297] *Id.*

[298] *Id.* (quoting State v. Ferrier, 960 P.2d 927, 933 (Wash. 1998)). The Washington Supreme Court also believed that "any knock and talk is inherently coercive to some degree." *Ferrier*, 960 P.2d at 933.

[299] Michael J. Zydney Mannheimer, *Coerced Confessions and the Fourth Amendment*, 30 HASTINGS CONST. L.Q. 57, 59 (2002).

[300] *Id.*

[301] *Id.* at 60.

a result of this illegal seizure should be suppressed. The Court did not set forth a novel approach, but rather correctly applied and reinforced precedent. In the past, when applying this same precedent, the Court has tended to side with the police in finding that no Fourth Amendment violation occurred or that the evidence obtained should not be suppressed. In finding for Kaupp, the Court balanced the intrusiveness of police conduct with the rights guaranteed by the Fourth Amendment. The Court's holding furthers the purposes of the Fourth Amendment and the exclusionary rule, and provides a standard of analysis that lower courts can follow. The Court has breathed new life into the Fourth Amendment and hopefully will begin to recognize the complete realm of protection against unreasonable seizures that the Fourth Amendment provides.

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